IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE SEVENTEENTH DAY OF MAY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE T.CH.SURYA RAO

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 1011 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 27/04/2005 in WVMP.NO.1946 OF 2004 & WPMP.NO.11377 OF 2004 IN WP NO : 8802 OF 2004 on the file of the High Court.)

Between:

1 M/s. Rawf Enterprises Rep. by its Managing Partner Mr. Mohammed Tajammul
48 years, Occ: Business, R/o. 21-3-405, Chelapura, Hyderabad.
2 M/s. Rawf Enterprises Rep. by its Partner Mr. M.A. Gaffar, 35 years, R/o. H.No. 23-1-919, Moghalpura, Inside Kalyani Nawab Devdi, Hyderabad.

..... APPELLANTS

AND

1 The Dy. Registrar of Cooperative Societies/ OSD, Arbitrator O/o. The Vasavi Coop. Urban Bank Ltd.,

Malakpet, Hyderabad.
2 The Sale Officer, Vasavi Co-operative Urban Bank Ltd., Malakpet, Hyderabad.

3 M/s. R.G. Steel Corporation, Rep. by its Managing Partner, M.A. Arif S/o. M.A. Rawoof, aged about 25 years, H.No.19-1-1097/1/2/A, Bhahadurpura, Hyderabad.

.....RESPONDENTS

Counsel for the Appellants : MS.K.N.VIJAYA LAXMI

Counsel for the Respondent No.1: GP FOR COOPERATION

Counsel for the respondent No.2: MR. S. ASHOK ANAND KUMAR.

Counsel for the respondent No.3: None appeared.

The Court made the following :

ORAL JUDGMENT:

(per Hon'ble Sri Justice T.CH. Surya Rao)

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1. This writ appeal is directed against the order dated 27.04.2005 passed by the learned single Judge whereunder and whereby the learned single Judge granted stay of auction initially subject to the condition that the petitioners should deposit an amount of Rs.5,00,000=00 and on compliance of the said condition, later on further condition of depositing an amount of Rs.50,00,000=00 within six weeks from the date thereof. A default order has also been passed simultaneously that in the event of default, the stay shall

stand vacated.

2. The petitioners filed the writ petition in W.P.No.8802 of 2004 assailing the auction notice dated 02.05.2004 as illegal, irregular, against the principles of natural justice and in violation of Articles 14 and 16 of the Constitution of India. The premise on which the petitioners are now seeking to assail the auction notice is that no notice has been served upon the petitioners earlier to the arbitration proceedings which culminated in passing an award against the principal debtor and all the partners of the present petitioners' firm. A specific stand taken by them inter alia in the affidavit filed in support of the writ petition emphatically is that no notice has been served upon the Company at any stage. Per contra the stand taken by 3rd respondent herein is that notices have been served upon all the partners of the petitioners' firm and in fact they have appeared before the Arbitrator in the proceedings and participated in the same. Having regard to the stands taken by the respective parties, the question as to whether notice has been served upon all the partners of the petitioners' firm and no notice has been served upon them, as contended by the petitioners, becomes contentious. The main writ petition is pending adjudication before the learned single Judge and it is only as against the interim order passed in the writ petition making the stay absolute with a condition to deposit Rs.50,00,000=00, the petitioners have approached this Court in appeal against the order of the learned single Judge.

3. We have heard both the learned counsel and shown anxious consideration to the material on record. A perusal of the record shows that even by 2002 the amount to be paid by the principal debtor in this case was swelled up to Rs.2,00,00,000=00 and it is much more by now. Having regard to the quantum of the amount to be paid by the principal debtor and having regard to the fact that the position of the partners in the firm and the firm as such as sureties of the principal debtor which is an admitted fact, and as the liability of a surety is co-extensive with that of the principal debtor, the impugned order cannot be found fault with. Anyway all this is not germane since the writ appeal is directed against an interim order passed by the learned single

Judge. In view of the fact that the amount liable to be paid is more than Rs.2,00,00,000=00, condition to deposit an amount of Rs.50,00,000=00 under no stretch of the imagination can be said to be onerous or would result in any hardship to the petitioners. In that view of the matter, there is nothing to interfere with the order passed by the learned single Judge.

4. At this stage the learned counsel for the appellants represents that the time granted by the learned single Judge may be extended further so as to enable the petitioners to raise the amount and deposit the same. Sri Ashok Anand Kumar, on the other hand, represents that in the event this Court is inclined to extend the time, the amount directed to be deposited should also be raised. We see that the said contention is not convincing. In the interest of justice, we are of the considered view that having regard to the passage of time due to the litigation and filing of the writ appeal, some reasonable time shall have to be granted to the appellants so that they can make necessary arrangement for raising the funds. In our considered view if another period of six weeks henceforth is granted, it would meet the ends of justice. We order accordingly.

5. With the above modification, the writ appeal fails and is dismissed. Under the circumstances, we direct both the parties to bear respective costs.

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T.CH. SURYA RAO. J.,

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K.C. BHANU. J.,

Dated: 17.05.2005.

VRK.

Copy to:

1 The Dy. Registrar of Cooperative Societies/ OSD,
Arbitrator O/o. The Vasavi Coop. Urban Bank Ltd.,

Malakpet, Hyderabad.
2 The Sale Officer, Vasavi Co-operative Urban Bank Ltd.,
Malakpet, Hyderabad.
3 . Two CCs to G.P., for Cooperation, High Court Buildings, Hyderabad (OUT).

4. Two CD copies.

THE HONOURABLE SRI JUSTICE

T.CH. SURYA RAO

AND

THE HONOURABLE SRI JUSTICE

K.C. BHANU

W.A.NO. 1011 OF 2005.

(Judgment of the Bench delivered by

Hon'ble Sri Justice T.CH.Surya Rao)

Dt: 17.05.2005.

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